HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or approved for reporting)
(Chapter VIII Rule 32 (2) (b)

Description of the Case.

Writ Petition No. 580 (S/S) 2006

Kedar Dutt Bhatt ...Petitioner

Vs.

State of Uttarakhand and 3 ors. ...Respondents

Approved for reporting.

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Not approved for reporting.

Date of Decision 29th March 2007.

Initial of Judge.

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IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL.

Writ Petition No. 580(S/S) 2006

Kedar Dutt Bhatt S/o Sri Krishnanand Bhatt,
Resident of village-Tilsari, Post Tilsari,
District Bageshwar. .....Petitioner.

Versus

1. State of Uttarakhand through Secretary,
   Education Department, Govt. of Uttarakhand,
   Dehradun,
2. Director, School Education, Uttarakhand, Dehradun,
3. Joint Director of Education,
   Kumaon Region, Nainital,
4. Principal, Govt. Inter College, Naula (Bhikiyasain),
   District Almora. .....Respondents.

Sri Manoj Tewari, learned counsel for the petitioner,
Sri N.P. Sah, learned Standing Counsel for the State/respondents.

Hon'ble M.M. Ghildiyal, J.

Heard Sri Manoj Tewari, learned counsel for the petitioner, Sri N.P. Sah, learned Standing Counsel for the State/respondents.

By means of this writ petition, the petitioner has prayed for the following reliefs:-

a. To issue a writ, order or direction in the nature of mandamus commanding the respondent no. 3 to permit the petitioner joined duties on the post of Assistant Teacher, L.T. Grade,

b. To issue a writ, order or direction in the nature of mandamus commanding the respondents to pay arrears of salary which had become due to the

petitioner on account of 4th pay revision w.e.f. 01.01.1986 as were paid to other similarity situate teachers in the year 1990,

c. To issue a writ, order or direction in the nature of mandamus commanding the respondents to pay the amount of expenses incurred in petitioner's treatment as medical reimbursement to the petitioner,

d. To issue a writ, order or direction in the nature of mandamus commanding the respondents to pay the salary for the period of medical leave to the petitioner in accordance with the relevant Rules,

e. To issue any other writ, order or direction, which this Hon'ble Court may deem fit and proper in the circumstances of the case,

f. Award the cost of the writ petition in favour of the petitioner.

Stand of the petitioner is that he was initially appointed as C.T. Grade Teacher in the year 1976 in a Govt. aided Higher Secondary School, Manan, district Almora, the said school was provincialised in the year 1979. Since 05.12.1989, the petitioner is working in Govt. Higher Secondary School, Naula (Bhikiyasain), district Almora. The petitioner proceeded on medical leave w.e.f. 18.12.1989 and has resumed his duties on 23.07.1990. Again on 25.07.1990, the petitioner went on medical leave and thereafter he did not turn up for about 10 years.

On 17.11.2000, the petitioner approached to the Principal at Higher Secondary School, Naula, to permit him to join, however the Principal did not permit him to do so. In this respect, the petitioner made number of representations to the

different authorities for providing him joining the post of Assistant Teacher in Govt. Inter College, Naula, however, he has not been permitted by the respondents till date. Thus, he was constrained to file the present writ petition.

The respondents have filed their counter affidavit. Para-7 of the counter affidavit is quoted hereunder:-

"7. That the contents of paras 8 & 9 of the writ petition as stated are not correct, hence denied. In reply thereof, it is submitted that the Earn Leave of 107 days has been sanctioned to the petitioner and the application for medical leave of the petitioner from 28.12.1989 to 22.07.1990 for total 207 days had been sent to the Director of Education, Allahabad for sanction, but the same has not been received it, the application for medical leave from 25.07.1990 to 08.07.1991 total 360 days has been return to the petitioner as the vouchers of medical leave of that period has not been countersigned by the Chief Medical Officer concerned which is a mandatory requirement for sanctioning medical leave as per law. The petitioner did not bother to submit them after verifying them from the Chief Medical Officer concerned, until yet so because of non submitting of proper medical leave voucher by the petitioner, the payment and other formalities of his salary could not be made and the petitioner himself is liable for the same. It is also pertinent to mention here that the petitioner has not furnish any information regarding his absence form the Institution after 08.07.1991 and never applied for medical leave for that period."

In Para-5 of the counter affidavit, the respondents have submitted that the petitioner had taken medical leave on 28.12.1989 and again on 25.07.1990 he went on medical leave.

But thereafter, he did not turn up to the School for about 10 years as he attended the Institution only on 17.11.2002. The petitioner did not submit any medical certificated in regard to his absence from his duties. On the contrary, the petitioner has annexed a letter, annexed as annexure no. 21 to the writ petition. This letter dated 27.11.2000 is written by Principal Higher Secondary School, Naula, Almora addressed to District Inspector of Schools, Almora wherein it is stated that as per the records, the petitioner did not join the School w.e.f. 28.12.1989 because of his illness and certificates to that effect have been sent to the Department time to time. It is further mentioned that after recovery form illness, he approached to the Principal on 27.11.2000 to permit him to join his duties. In the respect the Principal has requested the District Inspector of Schools to issue necessary directions permitting the petitioner to join his service, after about 10 years.

On one hand in the counter affidavit, the respondents have submitted that no information about his illness was furnished by the petitioner and, in fact, he has never applied for any medical leave after 25.07.1990 on the other hand, the Principal of the Institution his letter dated 27.11.2000 addressed to District Inspector of Schools, has stated that the relevant certificates about illness of the petitioner have already been forwarded to the Department. How it become possible for the Principal when he forwarded the medical certificates pertaining to the illness of the petitioner to the Department. Thus, it comes out that the respondents have made vague assertions; so far submission of the relevant certificates by the petitioner is concerned.

In the circumstances, I deem it fit and proper to direct the District Inspector of Schools, Almora to take decision in the matter of the petitioner for providing him joining, after obtaining instructions from the higher authorities, if required. In any case, the entire exercise shall be concluded within a period of two months from the date of production of a certified copy of this order.

With these directions the writ petition is finally disposed of. No order as to costs.

(M.M. Ghildiyal, J.)

March 29, 2007:
NCM: